





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**APPEARANCES:**

**For the Plaintiff  
and Intervenor:**

**LITT & STORMER**  
**BY: BARRETT S. LITT**  
**Paramount Plaza**  
**3550 Wilshire Boulevard**  
**Suite 1200**  
**Los Angeles, California 90010**  
**(213) 386-4303**

**-and-**

**BARRETT S. LITT**  
**BY: MICHAEL S. MAGNUSON**  
**The Oviatt Building**  
**617 South Olive Street**  
**Suite 1000**  
**Los Angeles, California 90014**  
**(213) 623-7511**

**For the Plaintiff  
Only:**

**PETERSON & BRYNAN**  
**BY: JOHN G. PETERSON**  
**8530 Wilshire Boulevard**  
**Suite 407**  
**Beverly Hills, California 90211**  
**(213) 659-9965**

**For the Defendant:**

**CONTOS & BUNCH**  
**BY: MICHAEL J. FLYNN and**  
**JULIA DRAGOJEVIC**  
**5855 Topanga Canyon Boulevard**  
**Suite 400**  
**Woodland Hills, California 91367**  
**(213) 716-9400**



1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 23, 1984; 1:35 P.M.

2 -oOo-

3  
4 THE COURT: Good afternoon, counsel.

5 MR. LITT: Good afternoon, Your Honor.

6 MR. FLYNN: Good afternoon, Your Honor.

7 THE COURT: Here we are again.

8 Mr. Litt, I guess the ball is in your court.

9 MR. LITT: I think it is, Your Honor.

10 Your Honor, we have some motions to make to the  
11 court and the ruling then will affect the outcome of where  
12 we go from there, so let me start with those.

13 The court is aware that at least as we view it,  
14 the defenses which have been asserted by the defendant in  
15 this case were not part of the file at the time we came  
16 into the court, and the court has made some indications that  
17 it sees a distinction between the equitable claims and the  
18 damages claims, so before we went further we wanted to make  
19 a suggestion to the court which we felt could potentially  
20 limit the nature of these proceeding without prejudicing  
21 either side in light of the defenses which have been permitted,  
22 and that is that we would request at this time that the damages  
23 claims be severed from the equitable claim. That the damages  
24 case, which now as we view it essentially overlaps the counter  
25 claim and relates to the same issues, be re consolidated with  
26 the counter claim and that we try at this time only the claim  
27 for the right to possession of the documents which hopefully  
28 can be a trial of a limited scope and one for which we feel



1 we have been prepared.

2 This would be our initial request, Your Honor.

3 THE COURT: Well, what is the defense position on that?

4 MR. FLYNN: Your Honor, may I have a moment?

5 THE COURT: Yes.

6 MR. FLYNN: Your Honor, this comes as a complete surprise  
7 to us, and if we could perhaps adjourn for five minutes.  
8 It is such a complete surprise and a complete shift from  
9 the entire direction of the case that frankly I am at a little  
10 bit of a loss.

11 My reaction is that we should go forward with  
12 the case, jury waived, but I'd like to consult with  
13 Mr. Armstrong.

14 THE COURT: Certainly.

15 MR. FLYNN: Just perhaps five minutes.

16 THE COURT: Okay, we will take a few minutes.

17 (Recess.)

18 THE COURT: We are back in session.

19 MR. FLYNN: It occurred to us almost immediately that  
20 there is one fundamental underlying issue that permeates  
21 the entire lawsuit with regard to the counter claim, and  
22 that is the documents. The thrust of the counter claim,  
23 if Your Honor reads it, is that Mr. Armstrong relied upon  
24 all of the representations that were made in relationship  
25 to Mr. Hubbard's background which he subsequently found to  
26 be almost universally falsified when he went through the  
27 documents. So, it strikes me that if we followed Mr. Litt's  
28 suggestion, the whole case should be reconsolidated because



1 it would be impossible -- what essentially would happen in  
2 potentially a case solely on the so-called equitable claims  
3 is we would arrive at the conclusion that Judge Cole and  
4 Judge Shimer, and I think another judge arrived at; namely,  
5 that we just keep the documents in the court and preserve  
6 them until the litigation is over or until other third party  
7 litigants have a right to use them, until that issue was  
8 determined.

9 So, it seems to me that there are fundamental  
10 issues in the counter claim that go to the use of the documents,  
11 and if they are going to try it, we might as well try the  
12 whole thing together.

13 THE COURT: I am not sure I understand what your position  
14 is. You object to it or what, or consent to it or stipulate  
15 to it or what?

16 He's made a motion that the damages should be  
17 severed from the equitable action and the case proceed only  
18 on the equitable action, and that the action be re consolidated  
19 with the cross-complaint on the action for damages. I am  
20 not sure what your position is on that motion.

21 MR. FLYNN: I object to the motion and I would suggest  
22 that the appropriate procedure would be to re consolidate  
23 the entire case.

24 THE COURT: Well, I am not about to do that unless  
25 the plaintiff were willing to stipulate to that. I don't  
26 know what discovery would be required, what further law and  
27 motion matters might have to be resolved.

28 But so far as the idea of severing the causes



1 of action for damages, my disposition is against that unless  
2 the parties by stipulation felt that was the way they wanted  
3 to mutually agree to try the matter. It seems to me that  
4 we are here. The case has been put together by both sides  
5 in a certain fashion and we are here for trial and we should  
6 go ahead and try the case, I guess, as long as that is what  
7 we are here to do.

8 So, I will deny the motion.

9 MR. LITT: In light of that ruling, Your Honor, this  
10 was alluded to the other day and the court indicated some  
11 of its tentative views on it, but I don't want to explain  
12 it further.

13 We are going to and we are moving for a substantial  
14 continuance in the case, and I want to make clear to the  
15 court why because I know the first words I will hear from  
16 the other side of the table is that this is a tactic or  
17 whatever.

18 Your Honor, this case was severed from the counter  
19 claim. It was severed from the counter claim specifically  
20 on the ground that the counter claim raised issues which  
21 did not exist in this case, having to do with Mr. Armstrong's  
22 allegations which essentially -- which allegations are  
23 essentially the allegations that have now been put forward  
24 by Mr. Armstrong is also his defense as to why he took the  
25 documents.

26 After the matter was severed, the counter claim  
27 was severed, the plaintiff moved to expedite the case. At  
28 the time that this occurred, that that occurred, there was



1 no unclean hands defense in the case nor was there any defense  
2 either in the case or that had been advanced by the defendant  
3 along the lines of what has now been adopted at the urging  
4 of the defendant as the scope of this matter.

5 Not only that, but every time the issue of unclean  
6 hands had come up, the affirmative defense had been stricken  
7 by the court, discovery was done on the basis of how we  
8 understood the issues.

9 After the preliminary injunction was entered,  
10 there was a motion to modify the preliminary injunction,  
11 and there was a hearing twice on summary judgment. We have  
12 provided the court the transcripts of the arguments at the  
13 time of the summary judgment hearings. The court will see  
14 from a review of that and can see from a review of the papers  
15 that, while various facts were asserted by the defendant,  
16 they could not connect it to any theory of the defense that  
17 had been put forward, that it did not refer to any affirmative  
18 defense as the basis of it that had been put forward.

19 The courts that addressed it did not address  
20 it in the context of an affirmative defense in discussing  
21 its relevance. In fact, in the argument Judge Shimer  
22 specifically said to Miss Dragojevic, "What does that have  
23 to do with this case?"

24 I raise all of this, the court is aware of our  
25 view of what the correct standards should be. I am not trying  
26 to get back into that. I am trying to explain to the court  
27 that we did not and I think reasonably did not under the  
28 circumstances and based upon the pleadings in the case prepare



1 a case of the nature and scope of the case that is now before  
2 the court. We feel that we have been prejudiced. I will  
3 tell the court that I took on behalf of Mrs. Hubbard three  
4 days of deposition testimony of Mr. Armstrong. At no time  
5 did I even try to explore these issues because the issues  
6 as framed were narrow. It was fully recognized that all  
7 of those issues would have to be addressed at some point  
8 in the litigation between Mr. Armstrong and the church, but  
9 it was not at issue and it was not even dealt with in our  
10 depositions.

11 We did not advance discovery on these issues,  
12 and I believe that the record shows that it was reasonable  
13 on our part, given how the pleadings were framed and given  
14 what had been permitted to be in the case that we conduct  
15 ourselves in this case. We wanted to get in particular to  
16 the issue of the equitable claim. The documents are very  
17 important to us. They are private documents. We want them  
18 back and we are now in a position where we feel that we are  
19 at an enormous disadvantage if we are to proceed immediately  
20 with a trial of the issues as they have now been defined  
21 in the case.

22 There is further discovery that we would want  
23 to do. There are further depositions of Mr. Armstrong that  
24 we would want to take. There are claims that have nothing  
25 to do with Mr. Armstrong that are now at issue in the case.  
26 The case has now become a case concerning whether -- the  
27 whole issue really of whether Scientology is a fraud, the  
28 allegation of that, and whether L. Ron Hubbard is a fraud.



1 There has been no discovery on those issues. There has been  
2 no probing of those issues. There has been no preparation  
3 on our part of those issues and we researched the law  
4 thoroughly.

5 We believe that we were conscientious about it.  
6 We found no case permitting the type of defense that is being  
7 discussed here. That defense was not articulated in any  
8 of the defendant's papers prior to the time of the opposition  
9 to the motions in limine, and we feel that a substantial  
10 continuance that allows us to do some further discovery,  
11 if we have to, we don't think it is proper, but if we have  
12 to, we will litigate the case and we will litigate it on  
13 these issues, and we believe that we will prevail on the  
14 issues. But we also believe that we are at a substantial  
15 disadvantage if we have to do that without having had notice  
16 of what the defenses are and what the issues are and having  
17 to try the case without such preparation.

18 On that basis without at this point trying to  
19 specify the full length of the continuance, we are requesting  
20 a continuance of some months. That would allow us to prepare  
21 that and have the case come to trial and have us be ready  
22 to try the case, so that at least the parties are in an equal  
23 position with respect to knowing what the issues are.

24 I have nothing further on that question.

25 THE COURT: Mr. Flynn?

26 MR. FLYNN: Your Honor, we oppose the motion. There  
27 have been several occasions where Mr. Litt has suggested  
28 to the court that the original answer did not assert the



1 defenses that we are now asserting, and I would submit if  
2 the court read pages 3, 4, 5 in the affirmative defenses  
3 in the original answer, you will see that all of the defenses,  
4 particularly the ". . . consistent pattern of fraud perpetrated  
5 by Hubbard through his agent, the plaintiff, upon members  
6 of the Church . . ." was asserted on page 3.

7 That the public had "an interest in said materials  
8 and documents in order to reveal the falsity of numerous  
9 representations uniformly made in writing by Hubbard and  
10 the plaintiff" as on page 3 of the very original answer.

11 As Your Honor knows, the defense of unclean hands  
12 has been asserted all along and, in fact, the plaintiff has  
13 filed extensive memoranda relating to the unclean hands defense  
14 trying to have it stricken all along.

15 Additionally, there have been five days of  
16 deposition testimony of Mr. Armstrong in this case and by  
17 this plaintiff there have been 13 days of deposition testimony  
18 because what they have done is they have chosen to depose  
19 him in every case they could depose him in, which I suggest  
20 is solely for the purpose of pressuring him.

21 MR. LITT: Your Honor, I am going to object to that.  
22 He was named by a witness in each of those cases, by  
23 Mr. Flynn who is his lawyer in those cases, and now to say  
24 in not only issues related to this case but for other things,  
25 and it is just improper to constantly make these allegations.  
26 There is no basis for it.

27 THE COURT: Okay, relax, gentlemen. Relax.

28 MR. FLYNN: I take strong issue. In most of those



1 cases there has been no witness list prepared in any event,  
2 but he has been deposed for 13 days.

3 Every item of his life has been meticulously  
4 discovered in connection with those 13 days, including the  
5 doctors he went to when he was 15 and 16 years old because  
6 I have attended many of these depositions.

t-2 7 The plaintiff has taken a great deal of discovery  
8 in this case and has been fully aware of the fact all the  
9 way along, particularly as the facts relate to the unclean  
10 hands defense. Now, the unclean hands defense is basically  
11 simple. It has to do with the fact that they used unlawful  
12 means to steal photographs back from Mr. Armstrong which  
13 they did. It was an intentional act, fully within the scope  
14 of their knowledge. Therefore, there is very little discovery  
15 that is needed. They are the ones who know precisely what  
16 they did.

17 With regard to the consummation of the biography,  
18 they took Mr. Garrison's deposition and we submit that the  
19 attempt to consummate the biography, even given their knowledge  
20 of the false background of L. Ron Hubbard would also be or  
21 result in the invocation of the doctrine of unclean hands.  
22 They are fully versed because of those issues, because they  
23 took the deposition of Garrison. They have possession of  
24 all of the documents, so they are fully versed with regard  
25 to everything that is in the documents.

26 With regard to the assaults on Mr. Armstrong,  
27 police reports were filed. They were perpetrated by agents  
28 of the plaintiff. They were intentional acts and because



1 they were intentional acts, they were all within the purview  
2 of the knowledge of the plaintiff, and further they were  
3 even intending to get costs for the private investigation  
4 services of some of these people who assaulted Mr. Armstrong  
5 during the course of this case, which Judge Cole took note  
6 of.

7 I submit, Your Honor, that when you come into  
8 a lawsuit and you inform the court that you are ready to  
9 try the issues in the lawsuit, and when the issues are as  
10 extensively briefed as were briefed in the motions in limine,  
11 then it is simply somewhat of a mythical claim to say that  
12 they are now unprepared to go forward.

13 Your Honor has basically spent five days reviewing  
14 several feet high of material which would suggest, in itself,  
15 that they have given extensive preparation to all of the  
16 issues in the lawsuit, and there is some degree of expertise  
17 required on the part of a plaintiff when he undertakes a  
18 lawsuit to anticipate what the issues will be, and I submit  
19 that they have known from the beginning what the issues are  
20 in this lawsuit. We have put a great deal of time in. The  
21 court has put a great deal of time in. The case is ready  
22 to go forward, and I think the motion should be denied.

23 THE COURT: Well, of course, it is --

24 MR. LITT: Before the court rules, I don't want --

25 THE COURT: Sure.

26 MR. LITT: The only affirmative defense -- the  
27 affirmative defenses that Mr. Flynn referred to, one is unclean  
28 hands. That was stricken.



1                   One is laches. That was stricken.

2                   One is standing. That we are perfectly prepared  
3 to deal with.

4                   One is privacy, whether they are private. That  
5 we are perfectly prepared to deal with.

6                   One, is it against public policy and in violation  
7 of the defendant in intervention's rights under the First  
8 Amendment to prevent him from disclosing or disseminating  
9 information. Nothing about what we have been talking about.

10                  Those were the affirmative defenses, plus our  
11 complaint. Those framed the issues and the unclean hands  
12 was out.

13                  I believe that the representations that we have  
14 made that we reasonably did not have notice that there was  
15 a charge that they were entitled to do this on claims of  
16 fraud is not in the case. At least, as we understood it,  
17 and that furthermore our research did not find any cases  
18 that permitted this issue even to be raised except in the  
19 context of public disclosure of private facts, which is not  
20 our allegations.

21                  So, I believe we are correct in saying that as  
22 we understood the issues and as they were framed by the  
23 pleadings, the issues that have not been identified, we were  
24 not on notice of. We are not, therefore, saying that they  
25 can't be tried. We are simply saying that we should have  
26 the opportunity to prepare for them.

27                  THE COURT: Well, I don't know. It seems to me that  
28 we may be attaching too much significance to labels here



1 rather than to substance. The issue is whether you are really  
2 prepared under the facts that you are aware of.

3 The court has refined its thinking a little bit.  
4 I think that the -- notwithstanding that you have a cause  
5 of action phrased in terms of invasion of privacy, it has  
6 to always be an unreasonable invasion of privacy before it  
7 is actionable. What is reasonable is going to depend, to  
8 some extent, on the circumstances so that is something that  
9 should have been anticipated, evaluation of what is reasonable  
10 and what is unreasonable.

11 Certainly, we have the fact that Mr. Armstrong  
12 is an agent, was an agent of different people and he always  
13 contended that, and he always contended that is the reason,  
14 I gather, that he had for delivering this matter to the  
15 attorneys involved. It is not, I don't believe, the contention  
16 that he went public in the sense that he went to Time Magazine  
17 or some other agency and publicized these matters, and he  
18 has asserted apparently that he believed it was necessary,  
19 assertion of his defenses to the actions being taken against  
20 him by the Church of Scientology or its agents.

21 Now, without going into whether or not that is  
22 true, it seems to me that that is essentially the defense  
23 he has asserted all along, and it seems to me that is within  
24 the ambit of his First Amendment rights to discuss these  
25 matters with his attorney and the Restatement says an  
26 assertion of a superior interest to that of -- in other words,  
27 to the interest of the party whose privacy is being invaded,  
28 and I think if what he says is true, that he would be perfectly



1 justified in delivering these materials to his counsel,  
2 assuming what counsel has represented to be true is true.  
3 So I don't think that this goes that much beyond any of the  
4 issues that have been framed.

5 So far as the unclean hands, I have already  
6 indicated that would only be considered by the court as an  
7 affirmative defense on the equitable causes of action, and  
8 you were ready to go forward with those.

9 I think that when you come to court for trial,  
10 you have to anticipate that you are not going to prevail  
11 on some of your motions, some of your thinking, that you  
12 have to anticipate all of the possible direction that the  
13 case is going to take, and I just don't feel that it is fair  
14 to have the defense, and I don't think it is fair to the  
15 taxpayers of the community to invest a week of a trial  
16 department's time and then throw it all out the window.

17 Certainly I don't really know what the technical  
18 problems will be as they develop, but at least at this  
19 particular point in time, I am going to deny the motion for  
20 continuance.

21 MR. LITT: Well, Your Honor, the continuance that I  
22 was just asking for was for a substantial continuance, and  
23 if the court is not prepared to do that, then we would ask  
24 for a brief continuance and I will explain what we would  
25 like to be able to have happen.

26 THE COURT: Very well.

27 MR. LITT: In the period of time of that brief  
28 continuance, we would like that the defendant -- we received



1 a list of documents. This is the first thing that comes  
2 close to being an itemization of the documents that they  
3 seek to admit. When we discuss those more, the court will  
4 still see that we do not have notice of even what documents  
5 are being asserted by the defendant.

6 We would like a document by document itemization  
7 of each document that is asserted by them as -- that they  
8 intend to introduce into evidence. The rules of the court  
9 require that the exhibits be identified. In the exhibit  
10 list that was exchanged between the parties, the exhibit  
11 list contained the following notation: "Documents under  
12 seal"; something to that effect.

13 There are eight to ten thousand pages of materials  
14 under seal. That is not an identification of the documents.  
15 This list begins to get to that issue, but it does not do  
16 any more than begin to get at that issue. So that is the  
17 first thing we believe that there should be in the way that  
18 an exhibit list is normally exchanged and prepared, a specified  
19 exchange of documents list which lets us know precisely what  
20 documents are being asserted.

21 Secondly, we then believe that the court should  
22 follow a certain procedure which is -- we cited to the court  
23 in our original papers the case of United States versus Hubbard  
24 that discussed the issue of a document by document review,  
25 not only for purposes of admissibility but also in balancing  
26 the privacy interests against the needs of a party to make  
27 use of the material, and it is our view, at least, that the  
28 court should still engage in such a process on a document



1 by document basis which can obviously only happen after there  
2 has been an opportunity to do that. That is the first thing  
3 which we feel should happen in the course of a short  
4 continuance.

5 The second thing which we feel should happen  
6 is that we should have the opportunity to take at least certain  
7 depositions, and we will be prepared to do it within a day,  
8 if necessary, but there are certain witnesses who have been  
9 identified by the defense whose depositions have not been  
10 taken who we had no reasonable notice of, and we would like  
11 the opportunity to take the depositions of four people for  
12 at least a day each. We will run them simultaneously, if  
13 necessary.

14 We would like those witnesses to be provided  
15 by the defense and give us the opportunity to at least see  
16 what it is that these people have to say on the issues in  
17 this case.

18 I will just give the court one example. The  
19 name of Laurel Sullivan has been thrown around quite a bit  
20 by Mr. Flynn. I, in fact, knew that Miss Sullivan, because  
21 she was Mr. Armstrong's senior, was a relevant issue in this  
22 case and I made an effort to see if I could get any cooperation  
23 from Miss Sullivan in having her deposition taken, and through  
24 an intermediary made the inquiry of whether I could get access  
25 to her address or her telephone number. Miss Sullivan's  
26 position was that she was not going to be a witness in this  
27 case. She did not want to be contacted by the church.

28 I spoke with her briefly on the telephone, but



1 she would not make herself available for deposition. We  
2 have had consistent claims made against us of harassing people,  
3 so I, in a discussion with Mr. Peterson and the church,  
4 instructed that there be no effort to contact her in light  
5 of the intentions that she had expressed.

6 I now find that she is voluntarily coming into  
7 the jurisdiction because I understand she does not live in  
8 California, is not subject to California subpoena power to  
9 be a witness.

10 Now, all of that is fine. She is entitled to  
11 appear and be a witness for Mr. Armstrong. I don't have  
12 any objection to her being a witness for Mr. Armstrong, but  
13 I do think we should be entitled to take her deposition.

14 There are other people whose names we were not  
15 aware of as even having to do with the issues in this case.  
16 For instance, the name Bill Franks has been thrown around  
17 a great deal. I know who Mr. Franks is. I know the position  
18 that he held. We made absolutely no effort to contact  
19 Mr. Franks in the context of this case, so we would just  
20 like to be able to designate by tomorrow morning four  
21 witnesses. We are not asking for all 50 or anything, but  
22 four witnesses who will be provided by the defense with the  
23 opportunity to take a deposition of each of them.

24 That deposition will be solely a discovery  
25 deposition and not a deposition for use at trial.

26 The third problem is, Your Honor, that in light  
27 of the court's ruling that it is going to permit documents  
28 to be entered, we now intend, and this is under maintaining



1 our general objection that none of these documents should  
2 be introduced, but we do not intend to fight this case with  
3 one hand tied behind our backs. We are going to designate  
4 documents from among the sealed documents of our own which  
5 will conclusively establish the fallaciousness of this defense,  
6 which will conclusively establish how private these materials  
7 are, which will conclusively establish that sending them  
8 to Mr. Flynn has no reasonable relationship to any allegations  
9 which were made by Mr. Armstrong, and we intend to designate  
10 such exhibits and present them, and would need the time to  
11 do that.

12 The courts should understand that my approach  
13 to these documents has been to as little as possible go through  
14 them. I feel like a voyeur when I read those documents.  
15 I don't think they are anybody's business, and we have tried  
16 in the context of representing our clients not to further  
17 intrude on their privacy, and we hoped that this trial could  
18 be tried in that way, but it appears it cannot. But we now  
19 feel that we need the opportunity to spend some time putting  
20 together some documents that we intend to introduce.

21 The court has permitted Mr. Armstrong to make  
22 an issue of reasonableness of Mr. Armstrong's conduct under  
23 certain circumstances. We believe that requires that we  
24 also present evidence of the reasonableness of the church's  
25 conduct and the church's state of mind with respect to various  
26 things which we did not think was relevant under the theory  
27 of the case which we believe casts the issues and frames  
28 the relevant evidence in the case.



1           We can do all of this, Your Honor, in a period  
2 of two weeks or even less, if necessary. We are not asking  
3 for a long continuance. We are not asking that it be  
4 transferred out of this court. This court can take a short  
5 cause matter or some other trials in the interim.

6           I have already explained the circumstances showing  
7 why we did not feel that we were prepared to put the case  
8 on and try the case in the way that it is now going to be  
9 tried, and we feel that it is reasonable that we have a brief  
10 continuance and that we have some order with respect to  
11 discovery along the lines that I have requested, and that  
12 in that time it will be difficult, but that we can be fully  
13 prepared to try the case on the issues that are now before  
14 the court.

15           MR. PETERSON: Your Honor, I would like to be heard  
16 on that matter if I might.

17           THE COURT: All right, Mr. Peterson.

18           MR. PETERSON: In reviewing the case as it stands today,  
19 as we are supposed to try the case, I really honestly feel  
20 that it is my client who stands to suffer the most. The  
21 defenses, as they are now defined, actually, in effect, will  
22 put my client on trial. The jury's state of mind regarding  
23 the church, jury's state of mind regarding his interpretation  
24 of what Fair Game means, could mean toward him, would mean  
25 in the context of other facts, seems to all be possibly  
26 relevant in this case.

27           These are issues, as Mr. Litt has explained to  
28 the court and that we had no idea would become a part of



1 this case when the case was severed and Your Honor was talking  
2 about judicial economy, I agree with you entirely. It was  
3 severed to try the very narrow issues of the conversion and  
4 invasion of privacy and the breach of fiduciary duty.

5 All of the issues that will come in that Gerry,  
6 his state of mind, the harassment of Gerry -- that claim  
7 is in his counter claim. That is why no discovery was done  
8 regarding Gerry's state of mind, regarding any of the harassive  
9 allegations, Fair Game. None of that discovery was done  
10 because it was always anticipated that will be a part of  
11 the counter claim and it may well be.

12 Something the court should bear in mind is why  
13 Mr. Litt has suggested that this case, the damages' part  
14 go back to the other cases. That will all be litigated if  
15 we litigate Gerry's state of mind, the harassive acts that  
16 Gerry Armstrong alleges. It will all be relitigated again  
17 in another two month trial three years from now.

18 So, there really isn't a lot of judicial economy  
19 in sending the damages claim off to the counter claim and  
20 just trying a good, clean equitable case on neutral principles  
21 of law with no First Amendment implications and all of that,  
22 but again that's already been argued.

23 But another problem, too, that I face, and I  
24 think it is sort of a trial tactic by Mr. Flynn which has  
25 caused me and my client a lot of concern over this weekend  
26 is that when we first started the trial, we went into chambers  
27 with Your Honor and Mr. Flynn spent 45 minutes with a bunch  
28 of unsupported allegations, some vague, unsupported harangue



1 against my client, the church, against L. Ron Hubbard, various  
2 things, talking about grand juries, fraud, the whole thing.

3 My client was told about it. I said, "Don't  
4 worry. The judge isn't the man who will be trying the case.  
5 It will be the jury."

6 Again on Thursday Mr. Flynn went through and  
7 I took notes, four pages of allegations against L. Ron Hubbard,  
8 including taking \$250 million from the church and putting  
9 it in a Lichtenstein bank account; that Mary Sue was stripped  
10 of her post by L. Ron Hubbard. That every Scientologist  
11 witness in this court will have been trained to lie. Wide  
12 variety of unsupported allegations.

13 But I told my client, "Don't worry. His Honor  
14 can put that all out of his mind because it will be a jury  
15 that will be listening to this case."

16 So, after Mr. Flynn was able to put all of these  
17 unsupported allegations in front of this court, he drops  
18 the jury demand and wants Your Honor, having heard all of  
19 this information, to try this case. My client was very upset  
20 at that thought.

21 I said, "Well, we can have a jury."

22 But he said, "Wait a minute. You said we didn't  
23 want a jury."

24 We had waived a jury. We weren't interested  
25 in trying our religion in front of 12 people. We wanted  
26 a sophisticated jurist, a judge, to listen to the evidence  
27 and to try this case. So, there was a very serious question  
28 put to me by my client of whether Your Honor could actually



1 try this case.

2 Now, I have assured them and I would like Your  
3 Honor maybe to state, and I think you can put all of the  
4 wild, unsupported allegations out of your mind. But I think  
5 it presents a problem that there is a possibility that this  
6 case should be transferred, but again I am not asking. I  
7 am not moving to disqualify Your Honor, but I think it is  
8 something that should be borne in mind about this case.

9 But what Mr. Litt said is entirely true. My  
10 client, the Church of Scientology, now must defend this case  
11 based upon what Gerry had in his mind regarding what the  
12 church had done. What it could do. What it has done to  
13 other people throughout the world, and we have to prepare  
14 a case now since last Friday when these rulings were made  
15 allowing these defenses.

16 Miss Dragojevic indicated that 21 of the 50  
17 witnesses had never, never appeared in any of the discovery.  
18 We will hear these witnesses' testimony for the first time  
19 when they are sitting there. That is no way to prepare for  
20 a trial.

21 You had mentioned well, the facts have been going  
22 around and we know the facts and the legal issues, the legal  
23 areas that you pushed the facts into. That isn't important.  
24 But it is very important. We have to try the case on what  
25 the law is. We don't want to get new facts from that witness  
26 stand while we are trying the case and trying to pigeonhole  
27 those facts into legal theories that we just heard about  
28 last Friday, so my client, the church, is in a very severe



-3  
1 disadvantage, Your Honor, and I think that at the very least  
2 we need two weeks to analyze these new defenses that just  
3 came up on Friday and Thursday. We need some chance to do  
4 a limited amount of discovery, and we could be ready to try  
5 this case.

6 THE COURT: Mr. Flynn?

7 MR. FLYNN: Your Honor, at the outset I'd simply like  
8 to read into the record the portion of the very first answer  
9 that was filed in this action. On page 3 the following  
10 defense is raised:

11 "Defendant states that Hubbard  
12 had absolute control of all plaintiffs'  
13 accounts, that plaintiff acted as the agent  
14 of Hubbard and that any and all of his  
15 activities were not conducted for the plaintiff  
16 but rather for Hubbard. Defendant denies that  
17 any and all materials collected or maintained  
18 by him in said project are the personal property  
19 of plaintiff, but rather states that said  
20 materials constitute his property or the  
21 property of Omar V. Garrison. Defendant further  
22 states that the materials and documents  
23 collected by him in said project in many  
24 respects reveal a consistent pattern of fraud  
25 perpetrated by Hubbard through his agent,  
26 the plaintiff, upon members of the Church of  
27 Scientology and the public at large. Defendant  
28 asserts that the membership of the Church of



1           Scientology and the general public have an  
2           interest in said materials and documents in  
3           order to reveal the falsity of numerous  
4           representations uniformly made in writing by  
5           Hubbard and the plaintiff."

6           That should put to rest the issue of whether  
7           or not the defendant knew what the basic defense was in this  
8           case. That is the very first answer that was filed.

9           With regard to the request for continuance for  
10          two weeks, the defendant objects but with regard to the  
11          itemization of the documents, the plaintiff is prepared to  
12          spend a day going through the documents that are relevant  
13          and segregating those documents so that either the court  
14          or the plaintiff in intervention can see specifically what  
15          documents are involved.

16          As far as the designation of documents by  
17          Mr. Litt, they have had the documents in their possession  
18          throughout the period of this litigation. They have also  
19          come into the court, I understand from Miss Dragojevic, on  
20          numerous occasions and itemized and catalogued every document.  
21          So, with regard to what documents they intended to introduce  
22          in evidence to show an invasion, I submit that when they  
23          filed the suit and made a claim for invasion of privacy and  
24          then filed a readiness to go to trial, they had access to  
25          all the documents and should have known specifically at that  
26          time what documents they intended to use.

27          With regard to Mr. Litt's statement that he felt  
28          like a voyeur if he looked at the documents, well, I simply



1 suggest to the court that these documents were all given  
2 to an author, Omar Garrison, to write a biography that was  
3 going to be disseminated all over the world about this man  
4 based upon these documents.

5 We would agree that a continuance perhaps until  
6 Wednesday morning so that each document can be itemized is  
7 appropriate.

8 With regard to a continuance to reopen discovery,  
9 we strenuously object to that. The plaintiff has taken  
10 numerous depositions and, in fact, this individual Laurel  
11 Sullivan that has been brought up, her name was placed, I  
12 understand from Miss Dragojevic, in interrogatories and answers  
13 to interrogatories some time ago. We ourselves until fairly  
14 recently did not have any particular access to Laurel Sullivan.  
15 Contrary to what Mr. Litt represented to the court, she is  
16 not appearing voluntarily. She's been subpoenaed.

17 Mr. Litt failed to inform the court that he had  
18 a two hour taped conversation with Laurel Sullivan in which  
19 they went over, from what she tells me, every aspect of the  
20 case and this was approximately a year ago.

21 She also tells me that he subsequently sent a  
22 memoranda to her, some four to five pages long, where  
23 Mr. Litt suggested what the full extent of her testimony  
24 or evidence would be regarding the case.

25 So, with regard to reopening discovery, we think  
26 that that is completely inappropriate. The itemization of  
27 documents, perhaps a one day continuance for that, can be  
28 done for both sides. We have no objection to that.



1                   With regard to Mr. Peterson's statements that  
2 they did not know about the Fair Game Doctrine and as to  
3 how it was applied to Mr. Armstrong, just the two volumes  
4 that we have checked of testimony on the summary of testimony  
5 at page 85, Volume 1, Mr. Armstrong was interrogated with  
6 regard to the Fair Game Doctrine and things that were done  
7 to him.

8                   On Volume 2, page 193, he was again interrogated  
9 with regard to the Fair Game Doctrine and what was done to  
10 him.

11                   With regard to wild and unsupported allegations,  
12 I submit to the court that everything I have said is absolutely  
13 true. They are not wild nor are they unsupported. Whether  
14 they are relevant remains to be seen in terms of the evidence  
15 that will be introduced, and that is basically our position.

16                   THE COURT: Well, of course, there is, I suppose any  
17 litigant is concerned about whether a judge is going to be  
18 able to put aside what people say and try to decide the case  
19 fairly. That is the normal situation.

20                   But I think the lawyers are trained,  
21 notwithstanding what they hear other lawyers say or what  
22 they hear other people talk about, most lawyers don't have  
23 any real problem with setting aside these impressions and  
24 deciding cases that were submitted to them on evidence.  
25 That is my reaction. I have been trying cases for 16 years  
26 as a judge, involved in trials day by day for 15 years before  
27 that, and I have no problem in my own mind separating what  
28 I hear from what actually is evidence in a lawsuit,



1 notwithstanding the charges and counter charges, and this  
2 is something that happens in nearly every case that comes  
3 before a court; charges and counter charges, lots of hyperbole  
4 and rhetoric and so forth, but when the chips are down, the  
5 cases are decided on the evidence that is presented to the  
6 court under oath. That is the way it is and that is the  
7 way it should be.

8 I think in reality judges are less likely to  
9 be swayed by some emotional appeals and rhetoric than some  
10 trial juries are likely to be swayed, but be that as it may,  
11 I don't see that there would be any basis for the court to  
12 disqualify itself.

13 If the case is going to be a court trial, I don't  
14 have any particular indisposition to allowing a reasonable  
15 continuance if there actually is a bona fide need for some  
16 further designation of exhibits or perhaps depositions of  
17 witnesses if this is really something that is necessary.  
18 I don't see that two weeks is required.

19 What witnesses do you have in mind? You have  
20 indicated Miss Erickson.

21 MR. LITT: Laurel Sullivan.

22 THE COURT: Or Sullivan.

23 MR. LITT: She will be one. I will tell you quite  
24 honestly we are at somewhat of a disadvantage.

25 How I would like to handle this is that one,  
26 the defendant tell us who the anticipated witnesses are.  
27 There is a 50 person witness list. We haven't the faintest  
28 idea who they seriously intend to call.



1           Mr. Flynn at one point said how do we know until  
2 we hear the case. Well, in part that may be true, but our  
3 trial brief sets forth in large part the elements of our  
4 case and the facts that we intend to prove. So, I think  
5 that the defense can clearly tell us at least the people  
6 that they know they intend to call based on what has been  
7 presented to them.

8           There are at least two I can think of at this  
9 point, which is Mr. Franks and Miss Sullivan. Mr. Franks,  
10 depending on what testimony he may have to give, there may  
11 be attorney-client privilege issues which have to be litigated  
12 by the court. Mr. Franks was the executive director  
13 international of the Church of Scientology of California.

14           It appears that he has divulged to Mr. Flynn  
15 the substance of conversations that he had with attorneys  
16 for the church at various times when he was acting as a  
17 representative of the church. I don't know if he intends  
18 to come in and rely on such information or not in any  
19 testimony, but if so, I make this statement based upon the  
20 fact that in another case where Mr. Franks was designated  
21 as a witness in which a plaintiff represented by Mr. Flynn  
22 is suing the church, that this information did come to light  
23 and that that issue has not yet been resolved in that lawsuit.

24           As to other potential witnesses, I don't know,  
25 Your Honor, quite honestly who they seriously intend to call  
26 off of this list. If we could get an agreement that the  
27 defendant has to specify the people that they presently know  
28 that they will call as defense witnesses, we can then look



1 at that and make the assessment. In particular, we could  
2 do that if there was even a generalized offer of proof as  
3 to the subject matter of the testimony of the individuals  
4 involved.

5 The court must understand that we are still not  
6 sure exactly what issues we are trying even now. Some of  
7 the allegations made by Mr. Flynn we still think are clearly  
8 beyond the pale of anything in this lawsuit, but we are not  
9 quite certain. So if there could be an offer of proof by  
10 the defense, and we could look at that, then have a bona fide  
11 witness list of the people that they intend to call. I am  
12 not trying to limit their ability to call other witnesses,  
13 but at least a good faith representation, then I think that  
14 we would be in a position to say and to make specific requests  
15 of the court.

16 If the court isn't inclined to give that, then  
17 I would ask until tomorrow morning to designate the people.  
18 I mentioned four people just because it seemed a reasonable  
19 figure that wasn't getting out of hand. As Miss Dragojevic  
20 said, there are 21 people on their witness list who have  
21 never been named in discovery in this case by her own admission,  
22 so we would suggest that procedure then, Your Honor, and  
23 we could then tell the court exactly who we feel we would  
24 need. But the two names I mentioned are clearly two such  
25 people.

26 MR. PETERSON: One other point, Your Honor. The access  
27 to the documents at the present time is limited by court  
28 order of Judge Olson that we can only see them two days a



1 week, Julia, and you have to give 24 hours' notice, and you  
2 can only be there for three hours at a time or there is some  
3 set of rules which I don't think we can get in now.

4 THE COURT: Let's put it this way. We could make some  
5 order to amend that so far as that goes. That is not any  
6 problem. My order would supercede Olson's.

7 MR. LITT: There is a third name I have which is Jim  
8 Dincalci, D-i-n-c-a-l-c-i, who is on the witness list of  
9 the defendant and whose deposition we would like to take.

10 THE COURT: Do you definitely propose to call these  
11 three people, Mr. Flynn?

12 MR. FLYNN: Laurel Sullivan will certainly be called.  
13 However, we submit that her name was on the witness list  
14 in interrogatories all along. Mr. Litt, as I said, had a  
15 two hour taped telephone conversation with her and is fully  
16 apprised of everything she intends to testify about.

17 MR. LITT: I don't think the conversation was taped.  
18 I did have a conversation with her.

19 MR. FLYNN: She informed me that it was taped.

20 MR. LITT: Maybe it was.

21 MR. FLYNN: That the initial part of it was taped and  
22 then she asked and Mr. Litt said he did have a tape recording  
23 going, and then she asked --

24 MR. LITT: That is false. This is false. I never  
25 taped anyone without their consent.

26 I don't recall whether there was a tape recording,  
27 but if there was a tape recording, she consented to it and  
28 her voice was not recorded without her consent for one moment



1 and, Your Honor, I really would like this to stop.

2 THE COURT: Well, do you know whether or not you have  
3 any kind of a tape recording, counsel, of this conversation  
4 that you had?

5 MR. LITT: I can check with my associate to see. I  
6 am virtually positive that we did not tape the call because  
7 we did a file memorandum based on notes, and we would have  
8 done a transcript had we taped it, and I know we didn't do  
9 a transcript so I can tell the court that we did not tape  
10 the conversation.

11 Whether there was some portion of it taped is  
12 what I cannot say without absolute certainty, but no portion  
13 was taped without her consent, if any portion was taped,  
14 which I doubt.

15 THE COURT: I will accept that.

16 MR. FLYNN: All I can tell the court is Mr. Litt called  
17 her once. The conversation lasted approximately five minutes.  
18 She asked if it was being taped. He said it was.

19 THE COURT: Well, this is what she told you.

20 MR. FLYNN: This is what she told me. She called him  
21 back half an hour after that.

22 He told at the beginning of the conversation  
23 that the first conversation was taped and they then went  
24 on for two hours and then he sent her a five or six page  
25 memo about what was in the conversation. That is all I can  
26 tell the court.

27 Now, Laurel Sullivan will definitely be called  
28 as a witness. She was Mr. Armstrong's senior.



1 THE COURT: Okay, you don't need to go into that.

2 Can she be made available for deposition here?  
3 Is she out of the state now or she is coming in or she is  
4 here?

5 MR. FLYNN: No, that was another misstatement. She  
6 is now a resident of California and working and living in  
7 the State of California.

8 THE COURT: Can she be made available for deposition?  
9 Is she local?

10 MR. FLYNN: I can consult with her and I can do my  
11 best to make her available as soon as possible which I will  
12 do.

13 MR. LITT: Wait, Your Honor. I would like the court --  
14 I guarantee the court that if the court enters an order that  
15 in order for the defense to call her she make herself  
16 available, she will be made available. If it is a question  
17 of asking Miss Sullivan whether she wishes to make herself  
18 available, I can tell the court what her answer will be.  
19 She is cooperating with the defense. That is fine, but then  
20 the defense should have to cooperate and should have the  
21 incentive to cooperate and the witness should have the  
22 incentive to cooperate.

23 THE COURT: I don't have any problem with that, counsel.

24 MR. FLYNN: So I will do my best, Your Honor.

25 In the last several weeks I have learned quite  
26 a bit about her involvement in this case, specifically with  
27 regard to the fundamental issues of the shredding, the  
28 biography project --



1           MR. PETERSON: Your Honor, you are now the trier of  
2 fact in this case. I think you should hear this testimony  
3 from the lips of the witnesses and not Mr. Flynn's distorted  
4 view.

5           MR. FLYNN: I thought they wanted an offer of proof.

6           THE COURT: Yes, he wanted an offer of proof.

7           MR. LITT: Well, is this an offer of proof?

8           MR. FLYNN: This is basically what I was going to call  
9 the witness for.

10          MR. LITT: Okay. As long as it is an offer of proof,  
11 fine.

12          MR. PETERSON: Categorize it as an offer of proof.

13          THE COURT: Okay.

14          MR. FLYNN: Your Honor, with regard to the shredding,  
15 the biography project, her supervision of Mr. Armstrong,  
16 the permission of Armstrong to give the documents to Garrison,  
17 the fact that the contract was specifically silent on the  
18 issue of what Garrison could do with the documents and was  
19 specifically made so, the fact that she was subsequently  
20 declared and she was offered to have that Declare suspended  
21 if she would testify cooperatively, the fact that she worked  
22 for L. Ron Hubbard, that Gerry Armstrong worked for L. Ron  
23 Hubbard, that there were extensive discussions of those  
24 particular facts because they were informed and it was agreed  
25 that if they worked for the church while working for Hubbard,  
26 it would be illegal. So it was always agreed upon throughout  
27 this project that both Miss Sullivan and Gerald Armstrong  
28 worked for Mr. Hubbard.



1           In fact, Mr. Hubbard told her that. There will  
2 be direct testimony that Hubbard instructed her that she  
3 was his personal employee as was Armstrong, and the fact  
4 that Mr. Armstrong brought the box of documents to her, told  
5 her that they were headed for the shredder and what should  
6 we do with them. That is basically her testimony.

7           With regard to Mr. Franks, it simply involved  
8 this entire shredding operation. He was the head of the  
9 church at the time. The reliance on Hubbard's background,  
10 the fact that the entire church revolved around L. Ron Hubbard,  
11 relied upon his background. That all the orders came directly  
12 down from Hubbard if that becomes an issue.

13           Mr. Dincalci, the fact that Mr. Dincalci was  
14 the actual owner of the photographs that were taken from  
15 Mr. Armstrong, stolen from Mr. Armstrong by church employees  
16 which goes to the unclean hands defense.

17           With regard to those witnesses, that is it.

18           But I submit, Your Honor, that a continuance  
19 for more than a day or two where we have already been at  
20 this for over a week is something that the court should  
21 seriously consider with regard to the imposition on the  
22 defense. The plaintiff has known throughout this litigation  
23 exactly who these people are and, in fact, because of the  
24 nature of the way the plaintiff operates, it has extensive  
25 files --

26           THE COURT: Well, be that as it may, is there somebody  
27 else that you --

28           MR. PETERSON: He hasn't designated the witnesses.



1           MR. LITT: Your Honor, once we get beyond those three  
2 witnesses, I have examined the defendant's witness list and  
3 I cannot quite honestly tell what is hype and what is real  
4 in these other witnesses. I mean, the three I named I could  
5 sort of make an assessment.

6           I assume that Joyce Armstrong is a serious witness.  
7 Is Omar Garrison -- his deposition has been taken. I don't  
8 know if he is going to come in live for the defendant.

9           MR. FLYNN: We intend to call him.

10          MR. LITT: He is not willing to make himself available  
11 to us live.

12          But then there is just a list here, Your Honor;  
13 John Nelson, Vicky Livingston, David Mayo. I am familiar  
14 with many of these people. I am also familiar with the fact  
15 that from what I know about them, they don't really know  
16 anything about this case and I just can't tell who he intends  
17 to call and who he doesn't.

18          At this time do you know who you are going to  
19 call?

20          MR. FLYNN: I don't know, Your Honor. I anticipate,  
21 based upon the evidence that I know, that a directed verdict,  
22 as I have previously submitted to the court, will probably  
23 be appropriate on virtually every count, and the simple fact  
24 of the matter if the documents were given to a journalist,  
25 I think that is probably the predominant fact in the case.  
26 I believe we will be entitled to a directed verdict, and  
27 I simply do not want, contrary to Mr. Litt's representation,  
28 to expand the case bigger than need be.



1                   However, if allegations are made by either  
2 Mrs. Hubbard or representatives of the church with regard  
3 to certain documents, the nature of the privacy interests  
4 of Mrs. Hubbard or L. Ron Hubbard, then we will have to expand  
5 on those issues. But at the present time, I simply don't  
6 know.

7                   THE COURT: What if we try the plaintiffs' case; I  
8 don't know what the posture of the case will be then. If  
9 it goes then to the defense and then he can identify these  
10 witnesses and maybe take a short break at that time.

11                   MR. LITT: What we would ask then, Your Honor, is that  
12 these three witnesses appear to be serious witnesses by  
13 Mr. Flynn. One of the points I was making earlier is we  
14 feel that we have to recast, to a certain extent, our own  
15 case to deal with the reasonableness of our conduct in the  
16 affirmative suit itself. We would like the opportunity to  
17 take at least three witnesses who can be identified by  
18 Mr. Flynn, and then after we rest our case, if there are  
19 witnesses who we can demonstrate to the court we didn't have  
20 reasonable opportunity to examine, that question can be dealt  
21 with at that time. If necessary, we are prepared to work  
22 weekends to do depositions or whatever is required. We are  
23 not trying to slow anything down, so the procedure that we  
24 would propose is that we have the opportunity to take these  
25 three depositions with the opening at the end of our case  
26 when Mr. Flynn can perhaps and after there's been a ruling  
27 on a directed verdict, which we don't expect him to win,  
28 and if Mr. Flynn has additional witnesses, that he can inform



1 us and the court at that time, and we can then take up any  
2 issues at that time before the court.

3 THE COURT: How long will it take to depose these three  
4 people? It doesn't sound like it is all that complicated.

5 MR. FLYNN: Franks is in New York.

6 THE COURT: When is he going to come out here?

7 MR. FLYNN: He is a cooperative witness and he was  
8 going to come out voluntarily, but the present status of  
9 the situation is I have told him I don't know --

10 THE COURT: I am not going to have him come out here  
11 specially -- if it gets to that, then you can have some time  
12 to take his deposition.

13 MR. LITT: That is fine.

14 Miss Sullivan, Mr. Flynn says, is here. I didn't  
15 know that, and I believe that Mr. Dincalci lives in the area,  
16 so for the two of them, I presume that should not be a problem.  
17 Miss Sullivan's deposition, I would expect, would take a  
18 full day.

19 Mr. Dincalci, if he is only being called on the  
20 photograph issue, I don't expect would take a lengthy period  
21 of time. I don't know for sure if the offer of proof is  
22 limited to that. I'd just like to get that clear.

23 MR. FLYNN: Your Honor, apparently Mr. Dincalci is  
24 only going to be limited to that one fact.

25 I would also bring to the attention of the court,  
26 if we are now going to reopen discovery, we have tried from  
27 the outset to take the deposition of David Miscavige. He,  
28 we believe, is the principal party in all of this litigation.



1 He runs the church. He works for L. Ron Hubbard, and we  
2 have sought to depose him since the beginning of the case,  
3 and he's never been made available. He communicates on a  
4 daily basis with Sherman Lenske, an attorney here in  
5 Los Angeles, who at one point, maybe he still does, had an  
6 appearance in this action.

7 If they are going to take the deposition of Laurel  
8 Sullivan and I am going to make her available, I submit,  
9 Your Honor, that we should be able to take the deposition  
10 of David Miscavige with regard to the following points:

11 If Mr. Miscavige tells the truth, he will testify  
12 that L. Ron Hubbard has known from day one about  
13 Mr. Armstrong's involvement with the biography project.  
14 That he was getting regular reports throughout the biography  
15 project through Mr. Miscavige. That he has been informed  
16 on a daily basis of everything that's occurred in this lawsuit  
17 which goes to his availability as a witness, his privacy  
18 interests, and virtually every issue that permeates the case.

19 If they are going to depose Laurel Sullivan and  
20 we are going to make Laurel available, I submit to the court  
21 that they should make David Miscavige available for a one  
22 day deposition.

23 MR. LITT: David Miscavige is not going to be called  
24 as a witness by us. We have no power whatsoever over David  
25 Miscavige. David Miscavige is not an officer or director  
26 or employee or managing agent of the Church of Scientology  
27 of California or of Mrs. Hubbard, and we simply have no ability  
28 to produce him.



1                    Obviously if we were using him as a witness,  
2 he would have to be made available. I have no quarrel with  
3 that if he was voluntarily cooperating with us to be a witness,  
4 which as far as I know he wouldn't know anything about this  
5 in any event. It is an inconceivable request.

6                    It is the same as the request that they made  
7 for us to produce Mr. Hubbard. We have no ability to produce  
8 Mr. Hubbard. There are a whole lot of people we have no  
9 ability to produce. All you can do in a case if you are  
10 going to use someone, then the other side should have the  
11 opportunity to use them. That is the most we can do.

12                   MR. PETERSON: This is an obvious red herring. The  
13 simple point is Laurel Sullivan is going to be his witness.  
14 If he wishes to withdraw Laurel Sullivan as his witness,  
15 then we won't take her deposition.

16                   But Mr. Miscavige is not going to be our witness  
17 and he has no knowledge of these facts.

18                   THE COURT: Well, if he is not an officer or director  
19 of the corporation, if he has some other informal role, I  
20 don't know what it is. It seems to me that it doesn't sound  
21 like he is that percipient to facts that are in issue here.

22                   At this time without prejudice to renewing it  
23 later, I will deny that request.

24                   How much time are you going to need to check  
25 the exhibits down here? I assume we can make an order that  
26 they will be made available to you, all counsel.

27                   MR. LITT: Here is what I think. What I would propose  
28 on the exhibits, Your Honor, is that the defense have a day



1 down there and then we have a day down there after we get  
2 their list, and the reason I say that is one, I want to correct  
3 one misstatement of fact. We do not have by any means all  
4 the documents that are under seal.

5 Mr. Armstrong took two or three thousand originals  
6 which, by his own testimony, he didn't copy before he took  
7 them and they are under seal in the court and there are no  
8 copies available to us whatsoever.

9 What we need to do is we need to see what documents  
10 they intend to introduce. We then need to go to the materials  
11 because there may be related documents in order to put certain  
12 things in context that we need to use, and we essentially  
13 need at least a full day to do that after we get their  
14 documents list.

15 Then, in addition, of course, as we have indicated,  
16 there are documents that we intend to introduce which we  
17 have not yet determined, which I think can be determined  
18 by -- well, we really need to go down and look through the  
19 materials that are not available to us as well, so I think  
20 we could determine that by Thursday and we could have looked  
21 at their documents by Thursday.

22 If tomorrow they go through the documents and  
23 first thing Wednesday morning or like 9:00 a.m. Wednesday  
24 morning have a list to us, that we can then go through them,  
25 I would say, by Thursday we could know, have reviewed those  
26 documents, know where we stand on these documents as well  
27 as identify what other documents we would intend to introduce  
28 and provide that list to them.



1 I don't know how the court wants to handle the  
2 issue of rulings on admissibility of documents, and there  
3 are other issues related to the documents.

4 THE COURT: That can be done in due course. If it  
5 is going to be a court trial, there is no real big problem.  
6 It seems to me we deal with it on an ad hoc basis as each  
7 exhibit comes up.

8 MR. FLYNN: I suggest we take the depositions on the  
9 weekend, one deposition now being of Laurel Sullivan.

10 MR. LITT: And Mr. Dincalci.

11 MR. FLYNN: But that is only limited to the photographs.  
12 That can be done on the weekend at the same time.

13 On the document issue I think we should simply  
14 both go down tomorrow. We will designate the ones we want.  
15 They can segregate the ones they want. Ours are not that  
16 much. We have given them the list this morning.

17 The Naval documents are voluminous and we will  
18 refer to them as one packet because the only way we can prove  
19 the substance of our claims is to look at the entire Naval  
20 record. There isn't one document you can look at.

21 MR. LITT: I can go through in terms of some suggestions  
22 I have.

23 THE COURT: Well, I would think in order to make this  
24 more logical, the thing to do, I think you should go down  
25 there and make a list and premark your exhibits; Plaintiff's  
26 1, 2, 3 or whatever and Defendant's A, B, C and so forth,  
27 and that will save us some time as well and make just a general  
28 brief description of what it is so the clerk will have it



1 ahead of time, also.

2 We will also, of course, have to make some  
3 arrangements with the clerk's office for getting those matters  
4 up here. I don't know. I haven't talked to anybody  
5 downstairs. I understand they want to talk to me, but I  
6 know what they are going to tell me. They are going to be  
7 complaining about the situation and the costs that may be  
8 involved and so forth, but I have been putting that off.  
9 I don't want to get to talking to them or be influenced by  
10 them on this thing. Anything they tell me, they can tell  
11 you, too.

12 MR. LITT: We do not particularly care to be down there  
13 going through the documents because we will be taking certain  
14 people with us who have familiarity with Mr. Hubbard's  
15 archives, who can help us to put things in context, with  
16 the defendant and his lawyers present. So we would suggest  
17 that that be done for obvious reasons on different days.

18 That the defense mark their exhibits tomorrow  
19 down there and provide us with a detailed list, and then  
20 we will do the same the following day, and on Thursday provide  
21 them a list.

22 THE COURT: Well, why don't I just recess the trial  
23 and start it on Monday, the 30th, as a court trial?

24 MR. LITT: That is acceptable.

25 THE COURT: I know Mr. Flynn is out here from the East  
26 Coast, but if it is going to be a court trial, it is going  
27 to be a lot shorter than a jury trial.

28 MR. FLYNN: My client has also lived with this and



1 he has had to drop his employment in order to defend the  
2 case. His wife has basically dropped her employment.

3 THE COURT: We are still going to try to get the case  
4 moving. It seems to me if you go down and premark your  
5 exhibits and the plaintiff can premark his exhibits. You  
6 can set up these depositions Thursday and Friday and do  
7 whatever else you have to do, and then we will be ready to  
8 go on Monday, the 30th, and we can get something to keep  
9 us busy the next four days.

10 MR. LITT: May I make a couple of other inquiries?  
11 The depositions, is it possible -- I am concerned about having  
12 transcripts prepared which is some difficulty.

13 Does Mr. Flynn know whether or not either of  
14 his witnesses are not working and therefore could be available  
15 on Friday?

16 MR. FLYNN: I will have to check with her, Your Honor.  
17 I have no idea. I know she is working full time. I believe  
18 the whole case is an imposition on her. I am going to ask  
19 her to voluntarily appear.

20 THE COURT: Maybe she'd do it on a Saturday to avoid  
21 losing work.

22 MR. LITT: Yes, if she is working, then we will do  
23 it on Saturday.

24 MR. FLYNN: Or in the alternative, if he will pay her  
25 day's wages.

26 THE COURT: You can check with him. You have a better  
27 chance of getting a transcript --

28 MR. LITT: Yes, I think we'd be prepared to do that,



1 but I'd have to check with the client.

2 MR. PETERSON: Also, Your Honor, Mr. Flynn has indicated  
3 that Miss Sullivan is under subpoena by his office. If he  
4 contacts her and she is not willing to appear for this  
5 deposition on her own, that he give us her address to allow  
6 us to subpoena her.

7 MR. FLYNN: I will do everything in my power to produce  
8 her because the address is a very sensitive issue.

9 THE COURT: I can understand. Considering the emotions  
10 involved in the case, we won't get involved in that. You  
11 make her available.

12 You tell her if she doesn't do it that way, then  
13 you will have to take some other steps to see that she gives  
14 her deposition.

15 MR. LITT: There are a couple of other questions that  
16 I have.

17 THE COURT: Let me think in terms for the moment of  
18 the kind of order we are going to need to give you people  
19 access to these records. I assume we will just make an order  
20 that the defendant, Mr. Armstrong, and his counsel, I assume,  
21 will have access to the records in the clerk's office between  
22 8:00 and 5:00 tomorrow.

23 THE CLERK: I don't recall now what the original order  
24 was.

25 MR. LITT: There is now an order that says Tuesdays  
26 and Fridays, 9:00 to 3:00 on 24 hours' notice.

27 THE COURT: Well, tomorrow is Tuesday. Will 9:00 to  
28 3:00 give you enough time?



1 MR. FLYNN: I think so, Your Honor.

2 THE COURT: And it is now 3:00. Is that enough time?  
3 Is that enough notice?

4 THE CLERK: I am sure that is okay.

5 THE COURT: And how much time do you want? Do you  
6 want Wednesday from 9:00 to 3:00?

7 MR. LITT: Wednesday from 9:00 to 4:00 and we would  
8 like, because we may need to do some follow-up, we will give  
9 the list on Thursday, but we'd like Thursday morning also  
10 if we need it. I will tell you that Mr. Nuttke, while a very  
11 nice man, if the order doesn't say it, we will have to come  
12 back and have it say it.

13 THE COURT: Wednesday 9:00 to 4:00 and Thursday 9:00  
14 through 12:00.

15 Where do you want to exchange these lists? Is  
16 there some neutral ground?

17 MR. LITT: We would ask that there be hand delivery  
18 to us by 9:00 a.m. Wednesday morning, if that can be arranged  
19 or 9:30 a.m. Wednesday morning by hand delivery, however  
20 they want to deliver it by hand. We will hand deliver by  
21 noon Thursday -- 1:30.

22 MR. FLYNN: That is fine.

23 THE COURT: I guess that is neutral ground.

24 MR. LITT: Now, Your Honor, there is a matter that  
25 we never reached because we reserved it.

26 THE COURT: We have been going for a long time. For  
27 the reporter's benefit, if it is going to be at all lengthy,  
28 we will take a recess.



1 MR. LITT: Well, I think the things I am going to raise  
2 might take another 10 to 15 minutes.

3 THE COURT: All right, we will take a recess.

4 (Recess.)

5 MR. FLYNN: Your Honor, I have just a couple of  
6 questions.

7 THE COURT: All right, we are back in session.

8 MR. FLYNN: We'd like permission for Mrs. Armstrong  
9 to come into the room where the documents are so she can  
10 basically work in a secretarial capacity to make notes.

11 THE COURT: All right.

12 MR. FLYNN: And if possible, we'd like to go in from  
13 9:00 to 5:00 rather than 9:00 to 3:00.

14 THE COURT: How about 8:30 to 4:30?

15 MR. FLYNN: Okay, 8:30 to 4:30, and Friday morning  
16 from 9:00 to 12:00.

17 THE COURT: Friday morning 9:00 to 12:00.

18 THE CLERK: They are not open until 9:00.

19 THE COURT: Okay, 9:00 to 5:00 tomorrow and Friday  
20 9:00 to 12:00.

21 MR. FLYNN: Mr. Dincalci is working in San Francisco,  
22 so apparently we are unable to produce him.

23 MR. LITT: Does that mean he is living in San Francisco  
24 or comes down on the weekends or what do we have here?

25 MR. FLYNN: I understand he is up in San Francisco,  
26 Your Honor.

27 THE COURT: Well, you can renew your request at the  
28 conclusion of the plaintiff's case, and then if he is going



1 to come down here, maybe you can get -- it is a very limited  
2 subject that he is going to testify about anyway.

3 MR. FLYNN: That he owned the photographs that were  
4 taken.

5 MR. LITT: It appears so.

6 THE COURT: Well, you may rethink your decision as  
7 to whether you want to depose him then.

8 MR. LITT: All right. As long as it is understood  
9 that before he testifies we will have the opportunity in  
10 some form, then we are not insisting that it be this week.

11 I am not saying that we will demand the opportunity,  
12 depending on what happens. We just want to know that we  
13 have the opportunity.

14 MR. FLYNN: And I assume that Laurel Sullivan is going  
15 to be limited to one day?

16 THE COURT: Yes. As long as it is a good faith effort  
17 to submit the deposition. As long as you don't spend all  
18 day arguing between counsel.

19 You can save your argument for when you come  
20 back to court.

21 MR. LITT: I understand.

22 What I wanted to move to at this point, and the  
23 court may want to defer this issue, but I wanted to raise  
24 it is that there are questions that were raised in our original  
25 motion in limine regarding the documents concerning their  
26 being sealed, their being subjected to discovery. There  
27 is, as the court may be aware, a present order that there  
28 is a requirement for a Special Master, procedure for the



1 discovery of any documents in this case in which various  
2 issues can be asserted. While the court has ruled that it  
3 is going to permit them in this case, the question of whether  
4 they would be discoverable in other cases is a separate issue.  
5 The issue here goes to Mr. Armstrong's state of mind. The  
6 issue in other cases goes to factual issues and allegations  
7 in support of plaintiff's complaint. We just want it to  
8 be clear one, that the order which I believe was an order  
9 of Judge Cole that set up a discovery procedure remains in  
10 effect for all documents.

11 THE COURT: Well, I am not interfering at this time  
12 with Judge Cole's order as it may relate to other cases.  
13 At the same time, I assume that we are trying the equitable  
14 issues along with the legal issues all at the same time,  
15 and the court will have to make some orders that may bear  
16 upon that in the course of whatever it does on this case,  
17 and so --

18 MR. LITT: That is fine. I understand.

19 MR. PETERSON: Also, since Mrs. Armstrong is going  
20 in, that she also be bound by the court's order of  
21 nondissemination of any of the information or documents.

22 THE COURT: Yes, I would make that order, that if she  
23 goes in there, it is on condition that she not disclose  
24 anything that is therein except in court or to counsel.

25 MR. FLYNN: That is not the order as I understand it.

26 MR. LITT: That she abide by the order.

27 THE COURT: I assume that is the order. What is the  
28 order?



1 MR. FLYNN: Anyone is free to talk about the contents.

2 MR. LITT: No.

3 MR. PETERSON: No.

4 THE COURT: It seems to me that she is going in there  
5 for a limited purpose, and that is acting in a secretarial  
6 type capacity, and that is that she will be foreclosed from  
7 discussing anything that is disclosed there except with counsel  
8 and with her husband and in open court. But she is not to  
9 disclose otherwise without further order of court.

10 MR. LITT: We would also like -- Mr. Flynn has not  
11 had access to these documents, assuming that the court is  
12 now allowing him to go into them, we also would like an order  
13 that requires that he has seen these materials under seal.  
14 He may not disclose the materials or the contents of the  
15 materials for any purpose outside of the use in this  
16 proceeding. That is the order that exists presently with  
17 respect to counsel.

18 THE COURT: I don't have any problem with that, at  
19 least until the court decides what to do with these exhibits.  
20 It seems to me at this point we are talking about this case.

21 He obviously is involved in a myriad of other  
22 cases involving, I guess you and Mr. Peterson, and it seems  
23 to me that at least until we have resolved the issues in  
24 this case, that probably any examinations will be limited  
25 to your use in this case, Mr. Flynn.

26 MR. FLYNN: I essentially have no quarrel with that.

27 The problem that I do have is that I am involved  
28 in other litigation. I am intimately familiar with the



1 documents. I am intimately familiar with Hubbard's background,  
2 and I deal with co-counsel all over the country and I speak  
3 on these issues.

4 In fact, in connection with one speech a contempt  
5 action was brought against me. My right of free speech to  
6 speak about Hubbard is something that the First Amendment  
7 guarantees me.

8 The realistic problem for me is that if the court  
9 enters an order, at some subsequent point in the future if  
10 I say anything, a contempt action will be brought against  
11 me. That is the history of what this organization has done,  
12 so in terms of the language of the court's order, that could  
13 be very significant because I already know what is in the  
14 documents. I have been speaking about them for four years  
15 in front of courts, legislative bodies and et cetera. To  
16 curtail that right would be curtailing something I have been  
17 doing for four years.

18 I will make a good faith representation to the  
19 court that pending this litigation, I don't have any present  
20 intention to go out and speak about the contents. With regard  
21 to discussions with other lawyers, I have those on a daily  
22 basis. What I don't intend to do is go into the court, look  
23 at the documents and then go out and speak about them. I  
24 already know what is in there, but I just don't want a  
25 contempt action brought against me in the future because  
26 of the technical language of the order.

27 MR. LITT: It is not a question of technical language.  
28 It is one of the problems that we raised as to why we felt



1 Mr. Flynn should not be provided access to the documents  
2 in which he says it is impossible for me to sort these out,  
3 and it is unfair if he is going to be given access to these,  
4 and the court will see that these are private documents,  
5 and he is being permitted access to them for this case, it  
6 is Mr. Flynn's obligation to either be able to say that he  
7 will be capable of following standard orders that it be used  
8 for only purposes of this case, the information that he learns  
9 and the contents that he learns, and that it not be  
10 disseminated for purposes of any other case, and it is unfair  
11 to us for Mr. Flynn to say, "Well, I know so much that it  
12 is impossible for me to say that. Therefore, I will go in  
13 and intrude on your privacy. I will go through all of these  
14 documents," and then he will say, "I don't know whether I  
15 was using that or not."

16 That is not fair.

17 THE COURT: Well, that would be true in an ordinary  
18 situation, but here we have a situation where these matters  
19 were already delivered to him.

20 MR. LITT: He says that he doesn't recall what those  
21 documents said and what he learned from those materials.  
22 He is now going to go back to them and he has made speeches,  
23 in essence, what has happened is that Mr. Armstrong tells  
24 him what is in the materials and then he has given speeches  
25 about them.

26 Now we are not asking for anything unreasonable,  
27 but the order that we are asking for is a standard order  
28 under the circumstances. Mr. Flynn is a plaintiff against



1 Mr. Hubbard. Mr. Flynn represents enumerable parties in  
2 litigation who are seeking these documents with Mr. Flynn  
3 or associates of his representing these parties.

4 The court, in order to protect the privacy of  
5 the documents, the court has set up a procedure to insure  
6 that their privacy is maintained and it is not fair. We  
7 did not create this situation.

8 We believe that we were the victims of this  
9 situation, and it is reasonable for us to request that he  
10 be bound by the same order that any other counsel in his  
11 position would be bound by, and if Mr. Flynn cannot do that,  
12 then I think the onus is on him to either be able to do it  
13 or to suggest that somebody who can do it handle this aspect  
14 of the case.

15 That was what we suggested originally and he  
16 opposed that, and the court has ruled on that and we are  
17 not reraising that. The order that would normally be entered  
18 in this respect, which I think is clear, applies to Mr. Flynn  
19 just as it would to any other counsel.

20 MR. FLYNN: I think I can obviate the problem. I will  
21 agree that I won't quote or disseminate any material from  
22 any documents presently under seal unless they are already  
23 in the public record.

24 MR. LITT: No. The public record doesn't solve it  
25 because we are moving -- that is the next item I was going  
26 to get into.

27 THE COURT: I don't know what is in the public record.

28 MR. FLYNN: Well, that at least protects me because



1 if a contempt action is brought against me, then I can say  
2 it is in the public record.

3 THE COURT: But if it is put in the public record by  
4 you, then we are sort of hoisted by our own --

5 If it has been put in the public record by someone  
6 other than you, but if it is put in the public record by  
7 you --

8 MR. FLYNN: Well, the public record, there seems to  
9 be some misconception. The public record predated  
10 Mr. Armstrong leaving the church. We collected many documents  
11 prior to Mr. Armstrong ever leaving the church.

12 MR. LITT: Very few of these, very, very few.

13 THE COURT: Well, I will accept the representation  
14 by Mr. Flynn that he is not going to do anything of an untoward  
15 nature that would violate the theory and the principles of  
16 what we are trying to deal with here. He is subject to the  
17 protective order.

18 At the same time, there are some things that  
19 I cannot make an order against. I can't order somebody to  
20 do the impossible, and he is not to -- during the pendency  
21 of these proceedings until further order discuss or disseminate  
22 to other people, other than people like his client or in  
23 court here, matters contained in the sealed records which  
24 were not in the public domain before Mr. Armstrong first  
25 went to Mr. Flynn or Miss Dragojevic, her firm. Anything  
26 that might have been in the public record before then is  
27 nothing I have a right to do anything about.

28 MR. LITT: The next part of this same general issue,



1 Your Honor, has to do with the question of the conditions  
2 under which any documents among the sealed documents are  
3 admitted into evidence.

4 We would ask that, and I don't know if the court  
5 wants to resolve this now or wait until we begin the trial  
6 or what or wait until the first document comes in, so I will  
7 just raise it and you can tell me.

8 We made a series of requests, the first of which  
9 was that any documents introduced into evidence shall be  
10 placed under the seal of the court when they are admitted  
11 into evidence. It is obvious, I think, that if what happens  
12 in the course of this trial is that Mr. Armstrong and his  
13 counsel are able to utilize the processes of this court and  
14 the existence of this trial to introduce the materials, which  
15 are private which is the whole gravamen of the case, into  
16 evidence publicly, that the whole purpose of the case will  
17 have been completely undermined. It is standard in trade  
18 secret cases and in other confidentiality cases that the  
19 procedure we are requesting be followed, and we would ask  
20 that it be followed here. It is critical to the protection  
21 of the privacy of these materials.

22 THE COURT: Well, I haven't got the impression that  
23 the defendant intends to do that. They have indicated there  
24 are only certain documents out of this massive collection  
25 that they intend to use.

26 MR. LITT: They are private documents that they intend  
27 to use.

28 THE COURT: Okay. The point is they haven't said that



1 they intended to use all of them. They want to use a select  
2 group, and the court will deal with it on an ad hoc basis  
3 as far as that is concerned. My disposition is that basically  
4 this is a public procedure, a trial, and matters which are  
5 of relevance and are material are to be made a part of the  
6 public record.

7 Now, if there is something that for some peculiar  
8 reason or some extraordinary situation that there is something  
9 that specially is a problem about, I will be glad to consider  
10 it and make the possibility of further orders, but my basic  
11 reaction is that this is a public courtroom. It is paid  
12 for by the taxpayers. I don't know what is in these documents.  
13 If it is something that strikes me as being something that  
14 shouldn't be bruited about, I will give consideration to  
15 it certainly, but because you put a characterization on this  
16 as being private writings, that could encompass a lot of  
17 things, many of which would be harmless and neutral and matters  
18 on which there is going to be testimony about here in the  
19 record, which is a public record, so I don't know. I will  
20 have to deal with it on an ad hoc basis, counsel.

21 MR. LITT: I don't know how the court wants to deal  
22 with it. When all the documents are marked, does the court  
23 want to review them at that time or -- I am very concerned  
24 about this, Your Honor.

25 I really feel that the whole purpose of this  
26 proceeding and the reason that this proceeding was brought  
27 will have been totally viciated if the documents which we  
28 will establish Mr. Armstrong had no right to take and no



1 right to give to anyone, and he did so, then they were brought  
2 to the court and now, in effect -- let me obviate your problem.  
3 He is going to give you a list by Wednesday of what he wants  
4 and you are going to give him a list on Thursday, whatever.

5 You come into court on Monday. We will have  
6 to get these exhibits here and there are some that you want  
7 me to review. All of them you want me to review I can do  
8 that. That is no big problem.

9 MR. LITT: Thank you, Your Honor.

10 The next question, Your Honor, and again I don't  
11 know if the court wants to deal with this now or wait, is  
12 that when we serve our supplemental exhibit list, there may  
13 be as a result of the rulings of the court and the way that  
14 the case will be restructured some additional witnesses that  
15 we will list. I do not expect it to be many, two or three,  
16 because we feel we have to address certain issues which we  
17 previously didn't feel, and we will serve that on the defendant  
18 as well on Thursday if that is acceptable.

19 MR. FLYNN: Your Honor, if there are going to be  
20 additional witnesses here, I am in the position of defendant,  
21 and I have had to make an offer of proof as to what my  
22 witnesses are going to say when I don't even know what  
23 plaintiff's case is going to be. I think I should be entitled  
24 to know now and be afforded the same opportunity to take  
25 their deposition if that becomes a necessity. I think if  
26 Mr. Litt has an idea of who these people are, he should tell  
27 me.

28 THE COURT: Who do you intend to call?



1           MR. LITT: I am not certain that it will be anybody  
2 additional, Your Honor.

3           We will be glad to provide the names by Thursday  
4 and anybody that we use we will make available for deposition  
5 if they want the deposition. I don't have any problem with  
6 that.

7           THE COURT: Make it known to counsel on Thursday and  
8 try to work something out with them if there is somebody  
9 you want to call.

10          MR. LITT: The next item, Your Honor, and again this  
11 may be an issue that best waits is that in the pretrial  
12 identified exhibits if there can be stipulations as to  
13 authenticity on various matters, it can save, I think,  
14 everybody's time. In the formal setting between counsel  
15 before the case we were not able to make much headway on  
16 that issue.

17          There are various items. There is a settlement  
18 agreement between Mr. Garrison and the publisher of the book.  
19 There is the contract between Mr. Garrison and the publisher  
20 of the book.

21          There is the letter from Mr. Hubbard which the  
22 court read the other day which we have a handwriting and  
23 fingerprint expert to testify about it and authenticate.  
24 I don't believe it has ever been examined by experts for  
25 the defendant, and I would suggest at some point for both  
26 sides that we establish a procedure whereby we see what  
27 stipulations can be had with respect to authenticity. That  
28 would shorten the trial. Otherwise, we would call three



1 witnesses to authenticate the letter from Mr. Hubbard.

2 We are perfectly prepared to do it, but I think  
3 it is unnecessary. But I think there may be other things.  
4 I just wanted to raise that and see if the court or counsel --

5 THE COURT: Can you tell me about any of those exhibits?

6 MR. FLYNN: As to the settlement agreement, we will  
7 stipulate to it and the contract with Garrison we will  
8 stipulate to.

9 The letter from Hubbard we won't.

10 THE COURT: Are there any other documents, Mr. Litt,  
11 that you are planning on introducing at this time on your  
12 case in chief?

13 MR. LITT: Yes, Your Honor. If I can just have a moment,  
14 I will find my list. There are a series of documents, most  
15 of which I don't believe are -- there are the bills from  
16 the investigation firm which we intend to introduce into  
17 evidence to show the investigation expenses related to finding  
18 out whether Mr. Armstrong had documents to which he was not  
19 entitled.

20 We are obviously not asking for stipulations  
21 to admissibility on relevance grounds, just foundational  
22 grounds.

23 THE COURT: Well, I understand that you are probably  
24 going to have to put somebody on to testify that they paid  
25 them.

26 MR. LITT: We can. Every exhibit we have we can  
27 authenticate, Your Honor.

28 We have a series of documents. I don't think



1 most of them are in issue. There was an exchange of letter  
2 between Mr. Armstrong and Mr. Peterson in which Mr. Peterson  
3 wrote to Mr. Armstrong concerning whether he had any documents.  
4 Mr. Armstrong responded to him. We intend to introduce those  
5 into evidence.

6 There are board minutes from the Church of  
7 Scientology. They have been listed out.

8 There are various receipts signed by Mr. Armstrong  
9 related to purchases he made for which moneys were provided  
10 to him, purchasing materials for the archives which demonstrate  
11 that he was, in fact, an agent of, an employee of the Church  
12 of Scientology of California. They are all listed. We can  
13 present foundational evidence on all of this.

14 THE COURT: You can cross-examine him on all of this  
15 as far as that goes.

16 MR. PETERSON: Mr. Flynn has been provided with a list  
17 of these exhibits. Maybe in the next day or two he can look  
18 at them and let us know by the end of the week if there are  
19 any that he can stipulate to and if not, we will present  
20 evidence.

21 MR. FLYNN: That is fine, and the same would go  
22 reciprocally.

23 MR. PETERSON: And we would do the same with his witness  
24 list.

25 THE COURT: Very well.

26 MR. LITT: Now, there are certain documents under seal,  
27 Your Honor, which we, at least, which we will want to deal  
28 with in advance. For instance, the materials which the court



1 ruled the other day were privileged are on the list of  
2 documents that Mr. Flynn submitted today. I suppose we can  
3 deal with that again, but certain things, at least, relate  
4 to privileged matters.

5 THE COURT: You mean those tapes?

6 MR. LITT: Yes.

7 THE COURT: Well, of course, that I suppose won't come  
8 up until the defendant's side of the case; will it?

9 MR. LITT: I don't know whether they may intend to  
10 use any of these in cross-examination or not, Your Honor.

11 MR. FLYNN: It may, Your Honor, for the following reason:  
12 A major issue in the case is who Armstrong worked for.

13 We will be bringing up through cross-examination  
14 of the plaintiffs' witnesses, depending on who they put on,  
15 what we consider to be fairly strong evidence that he worked  
16 for Hubbard. The tapes virtually conclusively proved that  
17 everyone worked for Hubbard. There are statements made on  
18 the tapes --

19 THE COURT: You don't need to go into that. The question  
20 merely is if you are going to be using them, then you should  
21 be prepared to demonstrate that there is no privilege attached  
22 to them. Maybe the facts are undisputed that they were given  
23 to him with the thought that they were blank tapes. I don't  
24 know whether that is going to be developed or not.

25 Then it is a question of who was present and  
26 what the purposes of this meeting were, and obviously there  
27 were attorneys present; whether that causes a waiver of the  
28 privilege, I am not sure.



1 MR. FLYNN: We will be prepared to go into that.

2 THE COURT: Do you have any briefs on that? I think  
3 the plaintiff does.

4 MR. LITT: Your Honor, in our motion in limine we briefed  
5 the issue extensively as to the attachment of the privilege.  
6 We did not extensively brief the waiver issue.

7 The court indicated the other day that a waiver  
8 has to be a knowing and intelligent waiver and by  
9 Mr. Armstrong's testimony, there was no knowing waiver.  
10 We can brief the issue further.

11 I am not prepared to argue it now.

12 THE COURT: I'd rather look it over and let counsel  
13 have a chance to maybe see if he has anything to submit on  
14 the issue.

15 MR. FLYNN: We intend to brief it, Your Honor.

16 There is one case which seems to be pretty much  
17 on point which I can give you the cite on.

18 THE COURT: Okay.

19 MR. FLYNN: Morley versus McFarlane, and it is at  
20 647 Pacific 2d 1215.

21 THE COURT: Got an official California reporter?

22 MR. FLYNN: It is a Colorado Supreme Court case.

23 THE COURT: Well, I don't have that.

24 MR. FLYNN: Oh, I can leave you a copy of it.

25 THE COURT: Okay.

26 MR. LITT: If a copy gets left, I would appreciate  
27 if I am provided a copy, also.

28 MR. FLYNN: I will have to Xerox it, Your Honor.



1 THE COURT: Okay.

2 MR. LITT: And on the question of access, could the  
3 order for access for us say that counsel and any three people  
4 who we designate as people who need access for purposes of  
5 the case? I am not sure who we are going to bring in, and  
6 again Mr. Nuttke is a bit of a stickler.

7 THE COURT: How much room do they have down there?

8 MR. LITT: They have room for that many people.

9 THE COURT: All right, counsel and three people.

10 MR. LITT: The other matters, and again I can take  
11 them up later, there is some deposition testimony that we  
12 intend to introduce. We intend to introduce substantial  
13 portions from Mr. Armstrong's deposition.

14 We also intend to introduce at least one other  
15 deposition, and on that deposition there are objections that  
16 we have to various cross-examination. I don't know exactly  
17 how the court wants to handle it. We can provide marked  
18 copies of the deposition indicating what we intend to introduce  
19 and indicating the portions of any other examination that  
20 we object to or we can have it read in and deal with it.  
21 I just don't know how the court would like to handle it.

22 THE COURT: I am not sure it is going to be a whole  
23 deposition that you are going to read or just a few questions  
24 and answers.

25 MR. LITT: It is not the whole deposition, but it is  
26 a substantial part of a deposition. I would say that it  
27 probably comes to 40 or 50 pages of a hundred page deposition.

28 THE COURT: Then I think the best way to handle it



1 is have one of you ask the questions and let Mr. Peterson  
2 read the answers from the witness stand, and if you have  
3 got a copy of it, I will follow and rule on the objections  
4 as they are made.

5 MR. LITT: That is fine, and the last thing that we  
6 wanted to state to the court is that in light of the rulings  
7 that have been made and especially in light of the fact there  
8 has been an issue about harassment is that one of the  
9 determinations that has been made is that I will not after  
10 today and in the course of the trial act on behalf of both  
11 Mrs. Hubbard and the church. Mr. Peterson will act on behalf  
12 of the church. I will act on behalf of Mrs. Hubbard, and  
13 the reason for that is that by the defendant's own allegations,  
14 there is no claim of any harassment by Mrs. Hubbard, and  
15 since the court is considering these and we are now in a  
16 position where potential defenses against one party may not  
17 be applicable against the other, we felt that the case should  
18 be reordered at this point, so we will continue to work  
19 together. We don't intend to duplicate efforts, but I did  
20 want to indicate --

21 THE COURT: All right, then, you are withdrawing as  
22 counsel for the church and Mr. Peterson -- are you attorney  
23 of record?

24 MR. PETERSON: I am attorney of record, Your Honor.

25 THE COURT: All right.

26 MR. LITT: It is no problem. Thank you, Your Honor.

27 MR. FLYNN: There is one other point, Your Honor.

28 Apparently from what Miss Dragojevic tells me in order to



1 separate the exhibits from the boxes they are presently in,  
2 which we are going to have to do to mark them and segregate  
3 them, we need permission from the court to put them in a  
4 separate box.

5 THE COURT: Well, that is fine with me. I will be  
6 glad to make an order that any exhibits that are being  
7 premarked by either side can be separated from the bulk of  
8 the exhibits so that they can be brought up here in due course  
9 eventually and not the whole bunch being brought up here.

10 MR. LITT: In doing that, Your Honor, we would like  
11 as each exhibit is removed that it be indicated what box  
12 it came from because some materials came from Miss Dragojevic's  
13 office. Some materials came from Mr. Flynn's office, and  
14 we don't want to get them mixed up in terms of any proof  
15 in the case.

16 THE COURT: In the way they are now, how are they  
17 identified? I don't know.

18 MR. LITT: They are in boxes that they were sent in,  
19 so there were two boxes sent by Contos & Bunch and those  
20 have address labels on them "Contos & Bunch." And then there  
21 were three boxes sent by the Law Offices of Michael J. Flynn,  
22 and those are in boxes marked with the address label of  
23 Mr. Flynn, so that the boxes that they are in are what they  
24 arrived in and they are self-identifying as to where they  
25 came from.

26 THE COURT: I guess when you identify them, you can  
27 put "CB" or "MF" or something like that beside them. Just  
28 use the initials "CB" in addition to the description of the



1 exhibit.

2 MR. LITT: Thank you, Your Honor.

3 THE COURT: Before you gentlemen run away and counsel,  
4 it has been brought to my attention by the clerk that  
5 Mr. Armstrong lodged a certain letter from Mary Sue Hubbard  
6 to L. Ron Hubbard. Apparently it was in a sealed condition.

7 THE CLERK: Yes, Your Honor.

8 THE COURT: And is it separate and apart from these  
9 other five boxes?

10 THE CLERK: I believe it was there, but nobody has  
11 ever opened it. They said Judge Olson deferred it to the  
12 trial court.

13 THE COURT: Is this something that either side wants  
14 to use in this case?

15 MR. LITT: We want to take a look at it. It is a letter  
16 identified by Mr. Armstrong. It is a letter of Mrs. Hubbard.  
17 It is a letter he took to Mr. Flynn in 1982.

18 His description of it is that it is a particularly  
19 personal letter. We have always intended not to use the  
20 letter because of its private nature. I am not certain that  
21 we are going to maintain that position, and therefore we  
22 probably want to look at it.

23 Mr. Flynn has already seen it. I have never  
24 seen it. Mr. Armstrong returned that after the order of  
25 the court was entered, and so we do want the order to say  
26 that we have the right to have it opened so we can examine  
27 the letter.

28 THE COURT: It is all right with me. Apparently written



1 by your client. I would think she might remember what was  
2 in it.

3 MR. LITT: It is a letter from 1953.

4 THE COURT: Oh, 31 years old.

5 MR. PETERSON: There is a lot of this stuff that is  
6 that old.

7 THE COURT: The letter may be opened by counsel. So  
8 be it.

9 MR. LITT: Thank you, Your Honor.

10 THE COURT: All right, then we will recess these  
11 proceedings until Monday, the 30th, and let's go forward  
12 at that time.

13 MR. LITT: Will that be at 9:00 a.m.?

14 THE COURT: 9:00 a.m., yes, indeed.

15 (At 3:40 p.m., an adjournment was taken  
16 until Monday, April 30, 1984, at  
17 9:00 a.m.)

18

19

20

21

22

23

24

25

26

27

28



